



- (1) Did claimant suffer accidental injury arising out of and in the course of his employment from February 2, 1996, to February 20, 1996, requiring double hernia repair surgery?
- (2) Did claimant suffer accidental injury arising out of and in the course of his employment from February 2, 1996, to April 1997, claimant's last day worked with respondent, with injury to his back and all related systems?
- (3) What is the nature and extent of claimant's injuries and/or disabilities?
- (4) Is claimant entitled to authorized medical treatment, unauthorized medical treatment, and additional temporary total disability compensation?
- (5) Is claimant entitled to future medical treatment resulting from the injuries sustained with respondent?
- (6) Were claimant's due process rights denied him due to the questioning of claimant by the Administrative Law Judge?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented, the Appeals Board makes the following findings of fact and conclusions of law:

The Award and Nunc Pro Tunc Award of the Administrative Law Judge set out findings of fact and conclusions of law in some detail, and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award and Nunc Pro Tunc Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Administrative Law Judge denied claimant an award of compensation, finding claimant's testimony to be inconsistent and lacking credibility. The Appeals Board has found on many occasions and continues to find that some deference should be given to an administrative law judge's conclusions when he or she has the opportunity to assess the credibility of live witness testimony. In this instance, the Administrative Law Judge had the opportunity to observe claimant testify at both the preliminary hearing and the regular hearing. The Administrative Law Judge, in reviewing the claimant's testimony and the

additional evidence in the record, found claimant's story to be lacking in credibility and to be fraught with inconsistency. The Appeals Board concurs, finding the denial of benefits in this matter should be affirmed.

Additionally, claimant alleged a denial of due process due to the Administrative Law Judge asking specific questions of claimant at both the preliminary hearing and the regular hearing. In reviewing the questioning process of the Administrative Law Judge, the Appeals Board finds the Administrative Law Judge appeared to be attempting to clarify some of the inconsistencies presented by claimant in his testimony. This attempt, rather than denying claimant due process, was a positive attempt by the Administrative Law Judge to clarify the record. The Appeals Board finds no error on the part of the Administrative Law Judge and no prejudice or denial of due process to the claimant.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the February 4, 1998, Award and February 16, 1998, Nunc Pro Tunc Award of Administrative Law Judge Bruce E. Moore should be, and are hereby, affirmed, and claimant is denied an award against the respondent for the injuries alleged.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Owens, Brake, Cowan & Associates	
Transcript of Preliminary Hearing	\$ 247.94
Transcript of Motion Hearing	\$ 86.68
Transcript of Regular Hearing	\$ 433.40
 Appino & Biggs Reporting Service	
Deposition of Robert L. Frayser, D.O.	\$ 117.00
Deposition of Walter Francis McIntosh	\$ 212.30
Deposition of Robin Durrett, D.O.	\$ 184.55
 Underwood & Shane	
Deposition of Brenda Farmer	\$ 91.50
Deposition of Gene Farmer	\$ 199.00
Deposition of Harlie Carr	\$ 104.50

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kent Roth, Great Bend, KS  
James B. Biggs, Topeka, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director